IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 93 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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LEGAL HEIRS OF SAIRIBEN BHANVATLAL - Appellant(s)
Versus
PURSHOTTAM JAIRAMDAS & CO. & 1 - Defendant(s)

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Appearance :
MR ASHISH M DAGLI for Appellant(s) : 1,
MR JV JAPEE for Defendant(s) : 1,
MR DHAVAL D VYAS for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 2.1.2006 passed by the labour Court in workman compensation case (fatal) new No. 131 of 1996 whereby the labour Commissioner has dismissed the application of the applicant.

2. The present appellant-original claimant has filed the application seeking compensation in respect of the accident which occurred on 19.01.94 while the

wife of the appellant who was serving at Kandla Port Birth No. 4 got injured by a crane resulting into her death. The present appellant therefore filed application for seeking compensation of Rs. 76,876/- with 12% interest and 50% penalty. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr. A.M. Dagli, learned advocate for the appellant has contended that the Tribunal has committed a serious error of law in interpreting Section 2D of the Act in the facts and circumstances of the case and by not considering the appellant as dependent of the deceased.

4. Mr. Vyas learned advocate for the respondent has submitted that the Tribunal after going through the facts and circumstances of the case has passed the award in accordance with law and therefore no interference is called for in the matter.

4.1 Mr Vyas has also relied upon the decisions reported in the cases of

(i)Imammiya Sadrumiya Malek & Anr. Vs.

Mahmadhusen Nabibbhai Shaikh reported in 1986(1) GLR 556

(ii)B.M. Habeebullah Marciar Vs. Periaswami and others reported in 1977 A.C.J. 517.

(iii)Divisional Manager, New India Assurance Co. Ltd. Vs. Rahidas Sabar and others reported in 1998 LAB. I.C. 2447.

5. Heard learned counsel for the parties. I have gone through the order of the Trial Court. It is quite imperative to peruse the decisions relied on by the learned counsel at this stage and the same is taken one by one.

5.1 In the case of ***Imammiya Sadrumiya Malek & Anr. (supra)*** it has been held that in order to claim the compensation it is necessary for the appellants to prove that they were dependants on the deceased. In the absence of evidence to show that any of the appellants was a “dependant” on the income of the

deceased, no compensation can be awarded.

5.2 In case of ***B.M. Habeebullah Marciar (supra),*** it has been held that the legal representatives of the claimant are not entitled for compensation because the benefit which the Act provided was for the workman himself and his dependants and to no others.

5.3 In the decision of the Orissa High Court in the case of ***Divisional Manager, New India Assurance Co. Ltd.(supra),*** it is held that while interpreting the words “dependent” and 'dependency', an unduly strict and narrow meaning is not to be given, keeping in mind the aims and objects of the Act which is to compensate the dependents for loss of dependency. Thus, the law does not require that the widower should be wholly dependent on the earnings of the deceased-wife. Partial dependence to whatever extent in may be, is sufficient to bring him within the four corners of this provision. It is made clear that respondent No. 2 has never employed the deceased but Opponent No. 1 was working for the respondent No. 2.

6. The say of the applicant is that he was employed

by opponent No. 1 and therefore the authority is required to decide whether the opponent No. 1 had employed the applicant's wife as well. In that view of the matter, ends of justice will be served by remanding the matter to the authority for reconsideration. Since it is clear that opponent No. 2 was not the employer in the present case, the remand is only qua opponent no.1.

7. In view of the above, the appeal is allowed to the aforesaid extent. The award of the Trial court is quashed and set aside. The matter is remanded to the trial court for fresh consideration of the same qua the liability of the opponent no.1. It shall be open to the opponent No. 2 to raise the contention as submitted herein before the authority. It is made clear this Court has not entered into the merits of the matter with regard to whether the wife of the appellant was employed by opponent No. 1 or not and the same shall be subject to adducing of evidence by both sides. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*